IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1994 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SJ PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1994 of 1999

GIRISH PATEL ASSOC for Petitioner No. 1

Mr. N.D.Gohil, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 28/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Manoj Shrimali for

the petitioner and Mr. N.D.Gohil, learned AGP for the respondents. In this petition, the petitioner has raised grievance that he has not been promoted to the post of Head of the Department, Non Technical Subject English Class I and, therefore, present petition has been filed. Reply to the present petition has been filed on behalf of the respondent no.3 by one Jayeshkumar D. Dave,Dy. Director of Technical Education, Sachivalaya, Gandhinagar. In para 4 and 5 of the said reply, the deponent has stated as under:

> " I say that at point of time two posts of Head of the Department (General) are vacant and out of these two posts, one post of Head of the Department, Mathematics proposal is made for direct recruitment in view of this office letter dated 7.12.1998 bearing No.Demand Patrai/head of th Deptt/1098-GH (4)-2444, and another proposal is made for one post of Head of the Department, English by way of promotion by this office letter no. Head of the Deptt/Promotion/1099/GH (4)-261 dated 20.2.99 to Education Department. I say and submit that name of the petitioner has been recommended in proposal for promotion for the post of Head of the Department, English."

Thus, from the averments made by the deponent in his affidavit in reply filed on behalf of respondent no.3, it appears that the proposal is made for one post of Head of the Department, English by way of promotion by office letter no. Head of the Deptt/Promotion/1099/GH (4)-261 dated 20.2.99 to Education Department and that the name of the petitioner has been recommended in proposal for promotion for the post of Head of the Department, English. Considering these averments made by the deponent in his affidavit in reply made on behalf of respondent no.3, learned AGP Mr.Gohil has been asked to submit as to what has happened to the said recommendation made for promotion of the petitioner pursuant to the letter dated 20.2.1999 but he was not been able to submit as to what is the ultimate out come of the proposal made vide letter dated 20.2.1999. He, however, submits that this petition may be disposed of and some suitable directions may be issued to the State Government for taking appropriate decision on the proposal made as per letter dated 20.2.1999,if so far it has not been taken by the State Government, within some reasonable period. Learned advocate Mr. Shrimali appearing for Mr. Patel has also submitted that the petition may be disposed of while issuing some suitable directions to the State Government. He has, however, requested to reserve

liberty in favour of the petitioner for moving appropriate forum in case if any orders adverse are passed by the State Government on the proposal made by the Department.

Considering the submissions made by the learned advocates for the parties, without expressing any opinion on the merits of the matter, Secretary, Education Department, State of Gujarat is directed to pass appropriate orders in accordance with law on the proposal dated 20.2.1999 and to consider the proposal of the respondent wherein the name of the petitioner has been recommended for the post of Head of the Department English within two months from the date of receipt of copy of this order without any further delay.

With these directions, this petition is disposed of with a liberty in favour of the petitioner to challenge the orders that may be passed by the Secretary, Education Department, State of Gujarat on the proposal of respondent NO. 3 dated 20.2.1999 before the appropriate forum in accordance with law if such orders are adverse to the petitioner.

Rule is made absolute in terms indicated hereinabove with no order as to costs.

(H.K. Rathod,J.)